

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
DOMTAR INDUSTRIES, INC.)	
)	
For Authority to Operate an Industrial Land)	FCC File No. 0002364245
Transportation Station in Ashdown, Arkansas)	
)	
and)	
)	
Request for Waiver of 900 MHz Application)	
Filing Freeze)	

ORDER

Adopted: January 17, 2007

Released: January 19, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We address a request for waiver filed by Domtar Industries, Inc. (Domtar).¹ Domtar seeks a waiver of the 900 MHz application freeze² prohibiting the filing of new license applications. Domtar requests a waiver to permit the processing of its application for frequencies formerly authorized to the Georgia Pacific Corporation (GPC) under 900 MHz Trunked, Industrial Land Transportation Station WPIQ461 in Ashdown, Arkansas, at a facility that Domtar acquired from GPC. For the reasons stated below, we deny the request for waiver and dismiss Domtar's application.

2. *Background.* On October 13, 1995, the Commission authorized GPC to operate the facilities authorized under Call Sign WPIQ461. GPC operated the system to facilitate security, safety and maintenance activities at its paper manufacturing plant in Ashdown, Arkansas.³ On July 10, 2000, the Commission sent GPC a license renewal reminder letter. GPC, however, failed to file a timely license renewal application.⁴ On October 13, 2000, the authorization for Call Sign WPIQ461 expired by its own terms. On August 1, 2001, GPC and Domtar consummated an asset purchase agreement pursuant to which Domtar took possession of GPC's Ashdown paper mill.⁵ Domtar continued to operate the system formerly licensed under Call Sign WPIQ461.⁶

¹ See FCC File No. 0002364245 (Oct. 31, 2005) Request for Rule Waiver (Waiver Request).

² See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005) (*900 MHz NPRM*).

³ See Waiver Request at 1.

⁴ See *id.*

⁵ See *id.*

⁶ See *id.* at 2.

3. On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze on new 900 MHz applications because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process designed to resolve interference to public safety communications.⁷ The Bureau stated that it would continue to accept applications for license modification and would entertain requests for waiver of the 900 MHz application freeze.⁸ The Commission subsequently released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.⁹

4. On September 22, 2005, Domtar applied for Special Temporary Authority (STA) to operate the facilities.¹⁰ On October 6, 2005, the Bureau returned the application to Domtar to afford it an opportunity to justify its request for frequencies subject to a filing freeze.¹¹ The STA application was dismissed on October 28, 2005, after Domtar failed to provide additional information.¹² On October 31, 2005, Domtar filed the subject application, which seeks a new permanent authorization to cover its operation of the existing facilities. Domtar requests a waiver of the freeze on new 900 MHz licenses applications to permit the processing of its application.¹³ On November 30, 2006, the Commission's Enforcement Bureau assessed a forfeiture penalty against Domtar for its unauthorized operation of the system formerly licensed under Call Sign WPIQ461.¹⁴

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹⁵ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶ We conclude that Domtar has not justified a waiver of the 900 MHz freeze.

6. The purpose of the 900 MHz freeze is to preserve adequate spectrum resources during band reconfiguration as well as to preserve the spectrum landscape until the Commission resolves the geographic licensing issues raised in the *900 MHz NPRM*.¹⁷ Domtar argues that grant of the instant waiver request would not frustrate the underlying purpose of the 900 MHz freeze, because grant of the instant application to continue existing operations will not reduce the amount of unoccupied spectrum.¹⁸

⁷ See *900 MHz Freeze PN*, 19 FCC Rcd at 18277-78.

⁸ *Id.* at 18278 n.7.

⁹ See *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

¹⁰ See FCC File No. 0002324265 (Sept. 22, 2005).

¹¹ See FCC Return Letter 3752889 (Oct. 6, 2005).

¹² See FCC Dismissal Letter 3780684 (Oct. 28, 2005).

¹³ See Waiver Request.

¹⁴ See Domtar Industries, Inc., *Notice of Apparent Liability for Forfeiture*, 21 FCC Rcd 13811 (EB SED 2006).

¹⁵ 47 C.F.R. § 1.925(b)(3)(i).

¹⁶ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁷ See *900 MHz Freeze PN*, 19 FCC Rcd 18277; *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

¹⁸ See Waiver Request at 3.

We disagree. Unlike other instances in which the 900 MHz freeze has been waived,¹⁹ the license for Station WPIQ461 was not valid at the time the Bureau imposed the freeze. Moreover, Domtar was never authorized to operate on these frequencies. Thus, grant of a waiver would not simply restore the pre-freeze status quo, but would add a new facility. The suggestion that Domtar merely seeks to “re-license” the frequencies formerly authorized under Call Sign WPIQ461 is not correct.²⁰ Domtar’s unauthorized operation of the facility does not entitle it to treatment similar to that afforded former licensees whose licenses expired after implementation of the freeze.

7. Domtar also contends that the 900 MHz band is the only band suitable for its use.²¹ Specifically, Domtar argues that use of the band is critical for the communications interoperability that the mill needs with local police, fire, and emergency medical services.²² This cannot be the case, however, because there are no public safety frequencies in the 900 MHz band.²³ Domtar adds that it would be cost-prohibitive to reconfigure its system to operate in another band.²⁴ This does not establish that Domtar has no reasonable alternative. Additional expense alone does not establish that a reasonable alternative is unavailable or that a waiver is warranted.²⁵

8. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission’s Rules 47 C.F.R. § 1.925, that the waiver request filed by Domtar Industries, Inc. in connection with FCC File No. 0002364245 and dated October 31, 2005 IS DENIED, and FCC File No. 0002364245 SHALL BE DISMISSED.

9. This action is taken under delegated authority pursuant to Sections 0.131(a) and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁹ See, e.g., Georgia Pacific Corp., *Order*, DA 06-2624 (WTB MD rel. Dec. 29, 2006); Disneyland Resort, *Order*, 21 FCC Rcd 536 (WTB PSCID 2006).

²⁰ See Waiver Request at 1.

²¹ See *id.* at 3.

²² *Id.* Domtar submits that the local public safety agencies all operate at 900 MHz and that GPC chose to operate in the same band to be interoperable during times of emergencies. *Id.*

²³ 47 C.F.R. §§ 90.20(d), 90.35(b)(3). Moreover, our licensing database contains no record of any public safety licensees operating in the 900 MHz band in the vicinity of Ashdown, Arkansas.

²⁴ See Waiver Request at 3.

²⁵ See, e.g., McDowell Construction, *Order on Reconsideration*, 18 FCC Rcd 1816, 1818 ¶ 6 (WTB PSPWD 2003) (citing Country Cousins, Inc., *Order*, 14 FCC Rcd 19351, 19352-53 ¶ 6 (WTB PSPWD 1999)).